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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matters of)
)
Ameritech Corporation Telephone Operating)
Companies' Continuing Property Records Audit)
)
Bell Atlantic (North) Telephone Companies')
Continuing Property Records Audit)
)
Bell Atlantic (South) Telephone Companies')
Continuing Property Records Audit)
)
BellSouth Telecommunications' Continuing)
Property Records Audit)
)
Pacific Bell and Nevada Bell Telephone)
Companies' Continuing Property Records Audit)
)
Southwestern Bell Telephone Company's)
Continuing Property Records Audit)
)
U S West Telephone Companies' Continuing)
Property Records Audit)
)

CC Docket No. 99-117

ASD File No. 99-22

FOIA Control No. 99-163

MCI WORLDCOM OPPOSITION TO APPLICATIONS FOR REVIEW

I. Introduction

Pursuant to Section 0.461(i)(1) of the Commission's rules, MCI WorldCom, Inc. (MCI WorldCom) hereby submits its opposition to the Ameritech, BellSouth, U S West, and SBC applications for review of the Common Carrier Bureau's decision (Bureau Decision) on the Freedom of Information Act (FOIA) request filed by MCI WorldCom on June 22, 1999.

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In its FOIA request, MCI WorldCom asked the Commission to release to the public certain materials related to Accounting Safeguards Division audits of the Regional Bell Operating Companies (RBOCs') Continuing Property Records (CPRs). Specifically, MCI WorldCom requested that the Commission release materials that interested parties require in order to address "Issue No. 2" of the Commission's Notice of Inquiry (NOI) in the above-captioned docket. Issue No. 2 invites public comment on "[t]he validity and reasonableness of the methodology used by the Bureau's auditors in determining whether to rescore or to modify a finding during a field audit that equipment was 'not found'."¹

In the Bureau Decision, the Bureau ordered the release of the requested audit information pursuant to a protective order. The Bureau found that "limited discretionary release of the audit materials under protective order is appropriate because of the Commission's duty to ensure that parties are given a reasonable opportunity to make informed comment on Issue No. 2 of the NOI."²

In their applications for review, the RBOCs contend (1) that the Bureau does not have the authority to order release of the requested audit information; and (2) that, even if the Bureau does have the authority to order release of the requested audit information, the Bureau's decision to do so was in error. Neither of these arguments has merit.

¹NOI at ¶6.

²Bureau Decision at 4.

II. The Bureau has the Authority to Order Release of the Requested Material

In the Bureau Decision, the Bureau elected not to conduct a full FOIA Exemption 4 analysis. Instead, the Bureau assumed that the requested materials were covered by Exemption 4, and relied on its discretionary authority to order release of confidential information. In their applications for review, U S West and Ameritech suggest that the Bureau does not have the authority to disclose confidential audit-related material. These RBOCs claim that neither Section 220(f) nor Section 4(j) of the Communications Act, the two sections of the Act upon which the Bureau Decision relies, grants the Commission the necessary authority.

Contrary to U S West and Ameritech's claims, the Commission has consistently found that "[Section 220(f)] is precisely the type of congressional authorization to disclose information which exempts disclosure from the strictures of the Trade Secrets Act."³ Similarly, in FCC v. Schreiber, the Supreme Court noted that "[g]rants of agency authority comparable in scope to Section 4(j) have been held to authorize public disclosure of information, or receipt of data in confidence, as the agency may determine to be proper upon a balancing of the public and private interests involved."⁴

³Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, Notice of Inquiry and Notice of Proposed Rulemaking, 11 FCC Rcd 12406, 12415 (1996) (Confidential Information Notice) (citing Amendment of Part 0 of the Commission's Rules with Respect to Delegation of Authority to the Chief, Common Carrier Bureau, 104 FCC 2d. 733, 737 (1986)).

⁴381 U.S. 279, 291-92 (1965). See also Confidential Information Notice, 11 FCC Rcd at 12413-12414.

Furthermore, there is no merit to Ameritech's contention that Section 220(f) of the Act "clearly does not allow disclosure by the Bureau on its own behalf before being 'directed by the Commission or the court.'"⁵ The Commission has explicitly delegated its authority under Section 220(f) to the Bureau.⁶

III. The Bureau's Decision to Release Audit-related Information Necessary to Address the NOI's Issue No. 2 was Consistent with Commission Precedent

Contrary to the RBOCs' claim that the Bureau ignored policy considerations favoring nondisclosure, the Bureau explicitly acknowledged the "longstanding Commission position of protecting its audit materials."⁷ But, in contrast to proceedings in which the Commission decided to withhold raw audit information from disclosure, the Bureau found that there was a unique and compelling interest in providing parties access to the information at issue. Moreover, the Bureau balanced the "compelling interest" in disclosure against the policy considerations favoring nondisclosure by only allowing release of the requested audit materials under a stringent protective order.

The RBOCs argue that the Bureau erred in finding a compelling interest in disclosure. They argue, in particular, that the requested information is not "a necessary

⁵Ameritech AFR at 4.

⁶Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, Report and Order, 13 FCC Rcd 24816, 24849-24850 (1998) (Confidential Information Order) (citing Amendment of Parts 0, 1, and 64 of the Commission's Rules with Respect to Delegation of Authority to the Chief, Common Carrier Bureau, and Technical Corrections and Deletions, 5 FCC Rcd 4601 (1990)).

⁷Bureau Decision at 3.

link in a chain of evidence that will resolve a public interest issue,” as is required by Commission precedent.⁸ SBC, for example, contends that Issue No. 2 “merely asks about the general reasonableness of the auditors’ methodology as described in the Rescoring Public Notice,”⁹ and that the information in the Rescoring Public Notice is therefore sufficient for interested parties to address Issue No. 2.

To the contrary, the NOI’s Issue No. 2 is not concerned with the “general reasonableness” of the methodology described by the Bureau. Issue No. 2 specifically asks interested parties to comment on the validity and reasonableness of “the methodology used by the Bureau’s auditors”¹⁰ In order to comment on the reasonableness of the methodology “used” by the Bureau’s auditors, interested parties must not only evaluate the general reasonableness of the rescoring methodology described by the Bureau in the Rescoring Public Notice, but must also evaluate whether the auditors applied the stated methodology in a reasonable and consistent manner. The inclusion of Issue No. 2 in the Public Notice, and Issue No. 2’s focus on the methodology actually “used” by the Bureau auditors, is the result of RBOC allegations that the Bureau auditors either disregarded the RBOC supplemental submissions entirely¹¹ or applied the rescoring standards inconsistently and unreasonably.¹²

⁸See, e.g., U S West AFR at 12.

⁹SBC AFR at 4.

¹⁰NOI at ¶6 (emphasis added).

¹¹See, e.g., SBC Response at 2-3.

¹²See, e.g., Ameritech Response at 2.

In order to evaluate whether the Bureau's auditors applied the rescoring methodology described in the Rescoring Public Notice in a reasonable manner, interested parties must be able to examine the auditors' rescoring decisions on an item-by-item basis. Interested parties must be able to examine (1) the CPR detail for the items at issue;¹³ (2) the material the RBOCs submitted in support of requests to rescore the items at issue; and (3) sufficient detail to determine how the auditors' scoring decisions may have changed in response to these submissions. This is precisely the information that was the subject of MCI WorldCom's FOIA request. Because this information constitutes a "necessary link in a chain of evidence" required to analyze an important public interest issue -- the NOI's Issue No. 2, the Bureau was correct to find a compelling interest in favor of disclosure.

Comments on Issue No. 2 that are informed by the requested audit information are certain to assist the Commission's analysis of Issue No. 2. Moreover, because the auditors' scoring is the basis for the audit reports' conclusions and recommendations, public comment on the reasonableness of the rescoring methodology is very likely to inform any Commission decisions concerning enforcement actions.

The Bureau's decision to order disclosure of the audit information pursuant to a protective order balances the compelling public interest in disclosure with the policy considerations favoring non-disclosure. As the Commission noted in the Confidential

¹³Interested parties require CPR detail such as description, cost, and quantity because the Bureau auditors' rescoring methodology used these characteristics to determine whether there was a "match" between the item described by the RBOC submissions and the item described by the CPR.

Information Order, “[i]n recent years the Commission has increasingly relied on special remedies such as redaction, aggregated data or summaries, and protective orders to balance the interests in disclosure and the interests in preserving the confidentiality of competitively sensitive materials.”¹⁴ Disclosure under a protective order “may serve the dual purpose of protecting competitively valuable information while still permitting limited disclosure for a specific public purpose.”¹⁵

IV. Conclusion

For the reasons stated herein, the Commission should deny the Applications for Review filed by Ameritech, BellSouth, SBC, and U S West.

Respectfully submitted,
MCI WORLDCOM, INC.



Alan Buzacott
1801 Pennsylvania Ave., NW
Washington, DC 20006
(202) 887-3204

August 17, 1999

¹⁴Confidential Information Order, 13 FCC Rcd at 24823-24824 (1998).

¹⁵Id.

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on August 17, 1999.



Alan Buzacott
Regulatory Analyst
1801 Pennsylvania Ave. NW
Washington, D.C. 20006
(202) 887-3204

CERTIFICATE OF SERVICE

I, Vivian I. Lee, do hereby certify that copies of the foregoing Opposition to Applications for Review were sent via first class mail, postage paid, to the following on this 17th day of August, 1999.

International Transcription Services**
1231 20th Street, N.W.,
Washington, DC 20036

Ken Moran**
Chief, Accounting Safeguards Division
Federal Communications Commission
Room 6-B201
445 12th Street, S.W.
Washington, DC 20554

Andy Mulitz**
Chief, Legal Branch
Accounting Safeguards Division
Federal Communications Commission
Room 6-B201
445 12th Street, S.W.
Washington, DC 20554

Leander R. Valent
Ameritech
9525 West Bryn Mawr, Suite 600
Rosemont, IL 60018

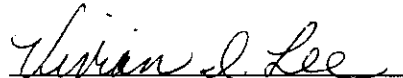
James T. Hannon
U S West Communications, Inc.
1020 19th Street, N.W., Suite 700
Washington, DC 20036

William T. Lake
Patrick J. Carome
Julie A. Veach
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420

Alfred G. Richter, Jr.
Roger K. Toppins
Jonathan W. Royston
SBC
One Bell Plaza, Room 3005
Dallas, TX 75202

M. Robert Sutherland
BellSouth Corporation
Suite 1800
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610

****HAND DELIVERED**


Vivian I. Lee